

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JOSE MORALES-CARRANZA,

CASE NO. 17-5204 RJB

Petitioner,

ORDER GRANTING
PETITIONER'S MOTION TO
DISMISS AND DENYING,
WITHOUT PREJUDICE,
RESPONDENT'S MOTION

V.

JEFFERSON B. SESSIONS, U.S.
Attorney General,

Respondent.

This matter comes before the Court on the Petitioner's Notice of Voluntary Dismissal (Dkt. 13) and Respondent's Motion for Court to Enter Findings of Fact and Conclusions of Law (Dkt. 14). The Court has considered the pleadings filed regarding the notice and motion and the remaining file.

I. FACTS

On March 15, 2017, this case was transferred from the Ninth Circuit Court of Appeals, pursuant to 8 U.S.C. § 1252(b)(5)(B), for the limited purpose of conducting a de novo review of Petitioner’s citizenship claim. Dkt. 1. On May 1, 2017, Petitioner filed a Notice of Voluntary

1 Dismissal with the Ninth Circuit Court of Appeals, voluntarily withdrawing his Petition for
2 Review because his primary witnesses are no longer able to testify on his behalf. Dkt. 13-1. The
3 Ninth Circuit construed Petitioner's notice as a motion, granted the motion, and dismissed the
4 petition that day. Dkt. 13-2.

5 Also on May 1, 2017, Petitioner filed the pending Notice of Voluntary Dismissal with
6 this Court, and attached the Order of Dismissal of the Ninth Circuit. Dkt. 13. This notice should
7 be construed as a motion for voluntary dismissal under Fed. R. Civ. P. 41 (a)(2). A little later on
8 May 1, 2017, Respondent filed a Motion for Court to Enter Findings of Fact and Conclusions of
9 Law. Dkt. 14. Respondent improperly noted the motion for May 1, 2017. *Id.* The
10 Respondent's motion was renoted by minute order and the parties were asked to address this
11 Court's jurisdiction now that the underlying petition has been dismissed by the Ninth Circuit
12 Court of Appeals. Dkt. 15.

13 **II. DISCUSSION**

14 Pursuant to Fed. R. Civ. P. 41 (a)(2), "an action may be dismissed at a Plaintiff's request only
15 by court order, on terms that the court considers proper." A motion for voluntary dismissal
16 under Rule 41(a)(2) should be granted "unless a defendant can show that it will suffer some plain
17 legal prejudice as a result." *Smith v. Lenches*, 263 F.3d 972, 975 (9th Cir. 2001).

18 Petitioner's motion for voluntary dismissal (Dkt. 13) should be granted. Respondent has
19 failed to show that he will suffer "plain legal prejudice" if this petition is dismissed. Although
20 Respondent argues that he has expended time and resources in an effort to defend against
21 Petitioner's claim, in the Ninth Circuit, "legal prejudice" means "prejudice to some legal interest,
22 some legal claim, some legal argument." *Smith*, at 976. Respondent makes no such showing.
23 This case should be dismissed without prejudice.

1 Moreover, the Ninth Circuit Court of Appeals has dismissed the underlying petition. Dkt.
2 13-2. Respondent fails to show that this Court has jurisdiction over this case after the Ninth
3 Circuit dismissed the underlying petition. Respondent's Motion for Court to Enter Findings of
4 Fact and Conclusions of Law (Dkt. 14) should be denied without prejudice.

5 The case should be dismissed without prejudice and closed.

6 **III. ORDER**

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- 8 • Petitioner's Notice of Voluntary Dismissal (Dkt. 13), construed as a motion for
voluntary dismissal (Dkt. 13) **IS GRANTED**; and
- 9 • Respondent's Motion for Court to Enter Findings of Fact and Conclusions of Law
(Dkt. 14) **IS DENIED WITHOUT PREJUDICE**; and
- 10 • This case **IS DISMISSED WITHOUT PREJUDICE AND CLOSED**.

12 The Clerk is directed to send uncertified copies of this Order to all counsel of record and
13 to any party appearing pro se at said party's last known address.

14 Dated this 22nd day of May, 2017.

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18 ROBERT J. BRYAN
19 United States District Judge
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